

1 S.51

2 Introduced by Senators Shumlin, Ayer, Bartlett, Campbell, Carris, Choate,

3 Cummings, Giard, Hartwell, Illuzzi, Kitchel, Lyons, Maynard,

4 Mazza, McCormack, Miller, Mullin, Nitka, Scott, Sears,

5 Snelling and White

6 Referred to Committee on

7 Date:

8 Subject: Commerce; motor vehicles; franchise practices

9 Statement of purpose: This bill proposes to amend Vermont's motor vehicle
10 franchise laws.

11 An act relating to Vermont's motor vehicle franchise laws

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. 9 V.S.A. chapter 108 is amended to read:

14 CHAPTER 108. MOTOR VEHICLE MANUFACTURERS,

15 DISTRIBUTORS, AND DEALERS FRANCHISING

16 § 4083. TITLE OF CHAPTER

17 This chapter may be known and cited as the "Motor Vehicle Manufacturers,

18 Distributors, and Dealers Franchising Practices Act."

1 § 4084. LEGISLATIVE FINDINGS

2 (a) The legislature finds and declares that the distribution and sale of
3 vehicles within this state vitally affects the general economy of the state and
4 the public interest and the public welfare, and that in order to promote the
5 public interest and the public welfare, and in the exercise of its police power, it
6 is necessary to regulate vehicle manufacturers, distributors or wholesalers and
7 factory or distributor representatives, and to regulate franchises issued by the
8 aforementioned who are doing business in this state in order to prevent frauds,
9 impositions and other abuses upon its citizens and to protect and preserve the
10 investments and properties of the citizens of this state.

11 (b) The legislature further finds that there continues to exist an inequality
12 of bargaining power between motor vehicle franchisors and motor vehicle
13 franchisees. This inequality of bargaining power enables motor vehicle
14 franchisors to compel motor vehicle franchisees to execute franchises and
15 related agreements that contain terms and conditions that would not routinely
16 be agreed to by the motor vehicle franchisees absent the compulsion and
17 duress which arise out of the inequality of bargaining power. Furthermore, as
18 the result of the inequality of bargaining power, motor vehicle franchisees have
19 been denied the opportunity to have disputes with their motor vehicle
20 franchisors arising out of the franchisor-franchisee relationship heard in an
21 appropriate venue, convenient to both parties, by tribunals established by

1 statute for the resolution of these disputes. It therefore is in the public interest
2 to enact legislation to prevent unfair or arbitrary treatment of motor vehicle
3 dealers by motor vehicle franchisors. It is the legislature's intent to have this
4 chapter liberally construed in order to achieve its purpose.

5 § 4085. DEFINITIONS

6 The following words, terms, and phrases when used in this chapter shall
7 have the meanings respectively ascribed to them in this section, except where
8 the context clearly indicates a different meaning:

9 (1) "Board" means the Vermont motor vehicle industry board as
10 established in section 4100b of this title.

11 (2) "Coerce" means the failure to act in a fair and equitable manner.

12 (3) "Dealership facilities" means the real estate, buildings, fixtures, and
13 improvements which have been devoted to the conduct of business under the
14 franchise by the new motor vehicle dealer;

15 ~~(2)~~(4) "Designated family member" means the spouse, child, grandchild,
16 parent, brother, or sister of the owner of a new motor vehicle dealer who, in the
17 case of the owner's death, is entitled to inherit the ownership interest in the
18 new motor vehicle dealer under the terms of the owner's will, or who has been
19 nominated in any other written instrument, or who, in the case of an
20 incapacitated owner of a new motor vehicle dealer, has been appointed by a
21 court as the legal representative of the new motor vehicle dealer's property;

1 ~~(3)~~(5) “Established place of business” means a permanent, commercial
2 building located within this state easily accessible and open to the public at all
3 reasonable times and at which the business of a new motor vehicle dealer,
4 including the display and repair of vehicles, may be lawfully carried on in
5 accordance with the terms of all applicable building codes, zoning, and other
6 land-use regulatory ordinances;

7 ~~(4)~~(6) “Franchise” means ~~the agreement or contract~~ all agreements or
8 contracts between any new motor vehicle manufacturer, written or otherwise,
9 and any new motor vehicle dealer which purports to fix the legal rights and
10 liabilities of the parties to such agreement or contract, and pursuant to which
11 the dealer purchases and resells the franchise product, performs warranty and
12 other service on the manufacturer’s products, or leases or rents the dealership
13 premises;

14 (A) “Franchisee” means any manufacturer, distributor, distributor
15 branch or factory branch, importer or other person, partnership, corporation,
16 association, or entity, whether resident or nonresident, which enters into or is
17 ~~presently~~ currently a party to a franchise with a motor vehicle dealer.

18 (B) “Franchisor” means a motor vehicle dealer who enters into or is
19 ~~presently~~ currently a party to a franchise with a franchisor.

1 ~~(5)~~(7) “Good faith” means honesty in fact and the observation of
2 reasonable commercial standards of fair dealing in the trade as defined and
3 interpreted in section 2-103(1)(b) of the Uniform Commercial Code;

4 (8) “Line make” means motor vehicles that are offered for sale, lease, or
5 distribution under a common name, trademark, service mark, or brand name of
6 the franchisor or manufacturer of the motor vehicle.

7 ~~(6)~~(9)(A) “Manufacturer” means any person, resident, or nonresident,
8 who manufactures or assembles new motor vehicles, or imports for distribution
9 through distributors of motor vehicles, or any partnership, firm, association,
10 joint venture, corporation or trust, resident or nonresident, which is controlled
11 by the manufacturer;

12 (B) Additionally, the term manufacturer shall include the following
13 terms:

14 ~~(A)~~(i) “Distributor” means any person, resident or nonresident, who
15 in whole or in part offers for sale, sells or distributes any new motor vehicle to
16 new motor vehicle dealers or who maintains factory representatives or who
17 controls any person, firm, association, corporation or trust, resident or
18 nonresident, who in whole or in part offers for sale, sells or distributes any new
19 motor vehicle to new motor vehicle dealers; and

20 ~~(B)~~(ii) “Factory branch” means a branch office maintained by a
21 manufacturer for the purpose of selling, or offering for sale, vehicles to a

1 distributor or new motor vehicle dealer, or for directing or supervising in
2 whole or in part factory or distributor representatives;

3 ~~(7)~~(10) “Motor vehicle” means every vehicle intended primarily for use
4 and operation on the public highways which is self-propelled, not including
5 farm tractors and other machines and tools used in the production, harvesting
6 and care of farm products;

7 ~~(8)~~(11) “New motor vehicle” means a vehicle which has been sold to a
8 new motor vehicle dealer and which has not been used for other than
9 demonstration purposes and on which the original title has not been issued
10 from the new motor vehicle dealer;

11 ~~(9)~~(12) “New motor vehicle dealer” means any person engaged in the
12 business of selling, offering to sell, soliciting or advertising the sale of new
13 motor vehicles and who holds, or held at the time a cause of action under this
14 chapter accrued, a valid sales and service agreement, franchise or contract,
15 granted by the manufacturer or distributor for the retail sale of said
16 manufacturer’s or distributor’s new motor vehicles;

17 ~~(10)~~(13) “Owner” means any person holding an ownership interest in
18 the business entity operating as a new motor vehicle dealer or under a franchise
19 as defined in this chapter either as a corporation, partnership ~~or~~ sole
20 proprietorship, or other legal entity. To the extent that the rights of any owner
21 under this chapter conflict with the rights of any other owner, such rights shall

1 accrue in priority order based on the percentage of ownership interest held by
2 each owner; with the owner having the greatest ownership interest having first
3 priority and succeeding priority accruing to other owners in the descending
4 order of percentage of ownership interest;

5 ~~(11)~~(14) "Person" means every natural person, partnership, corporation,
6 association, trust, estate, or any other legal entity;

7 ~~(12)~~(15) "Relevant market area" means the area within a radius of 25
8 miles around an existing dealer or the area of responsibility defined in the
9 franchise, whichever is greater; except that, where a manufacturer is seeking to
10 establish an additional new motor vehicle dealer and there are one or more
11 existing new motor vehicle dealers of the same line-make within a 10-mile
12 radius of the proposed dealer site, the "relevant market area" shall in all
13 instances be the area within a radius of 10 miles around an existing dealer.

14 § 4086. WARRANTY AND PREDELIVERY OBLIGATIONS TO NEW
15 MOTOR VEHICLE DEALERS

16 (a) Each new motor vehicle manufacturer shall specify in writing to each of
17 its new motor vehicle dealers licensed in this state the dealer's obligations for
18 predelivery preparation and warranty service on its products, shall compensate
19 the new motor vehicle dealer for such service required of the dealer by the
20 manufacturer, and shall provide the dealer the schedule of compensation to be

1 paid the dealer for parts, work and service in connection therewith, and the
2 time allowance for the performance of the work and service.

3 (b) A schedule of compensation shall not fail to include reasonable
4 compensation for diagnostic work, as well as for repair service and labor.
5 Time allowances for the diagnosis and performance of predelivery and
6 warranty service shall be reasonable and adequate for the work to be
7 performed. The hourly rate paid to a new motor vehicle dealer shall not be less
8 than the rate charged by the dealer to customers for nonwarranty service and
9 repairs. Each manufacturer shall compensate each of its dealers for parts used
10 to fulfill warranty, predelivery and recall obligations of repair and servicing at
11 ~~rates~~ amounts not less than the ~~rates~~ retail amounts customarily charged by the
12 dealer to its retail customers for like parts for nonwarranty work. A
13 manufacturer may not otherwise recover all or any portion of its costs for
14 compensating its motor vehicle dealers licensed in this state for warranty parts
15 and service either by reduction in the amount due to the dealer or by separate
16 charge, surcharge, or other imposition.

17 (c) For purposes of this section, the “retail amounts customarily charged”
18 by the franchisee for parts may be established by submitting to the
19 manufacturer 100 sequential nonwarranty customer-paid service repair orders
20 or 60 days of nonwarranty customer-paid service repair orders, whichever is
21 less in terms of total cost, covering repairs made no more than 180 days before

1 the submission and declaring the average percentage markup. The average
2 percentage markup so declared is the retail amount, which goes into effect 30
3 days following the declaration, subject to audit of the submitted repair orders
4 by the manufacturer and adjustment of the average percentage markup based
5 on that audit. Only retail sales not involving warranty repairs, not involving
6 state inspection, not involving routine maintenance such as changing the oil
7 and oil filter, and not involving accessories may be considered in calculating
8 the average percentage markup. A manufacturer may not require a new motor
9 vehicle dealer to establish the average percentage markup by an unduly
10 burdensome or time-consuming method or by requiring information that is
11 unduly burdensome or time-consuming to provide, including part-by-part or
12 transaction-by-transaction calculations. A new motor vehicle dealer may not
13 change the average percentage markup more than two times in one calendar
14 year. Further, the manufacturer shall reimburse the new motor vehicle dealer
15 for any labor performed at the retail rate customarily charged by that
16 franchisee for the same labor when not performed in satisfaction of a warranty,
17 provided the franchisee's rate for labor not performed in satisfaction of a
18 warranty is routinely posted in a place conspicuous to its service customer.

19 (d) It is a violation of this section for any new motor vehicle manufacturer
20 to fail to perform any warranty obligations or to fail to include in written
21 notices of factory recalls to new motor vehicle owners and dealers the expected

1 date by which necessary parts and equipment will be available to dealers for
2 the correction of such defects, or to fail to compensate any of the new motor
3 vehicle dealers in this state for repairs effected by a recall.

4 ~~(d)~~(e) All claims made by new motor vehicle dealers pursuant to this
5 section for labor and parts shall be paid within 30 days following their
6 approval; ~~provided, however, that the manufacturer retains the right to audit~~
7 ~~the claims and to charge back the dealer for fraudulent claims for a period of~~
8 ~~two years following payment.~~ All claims shall be either approved or
9 disapproved within 30 days after their receipt on forms and in the manner
10 specified by the manufacturer, and any claim not specifically disapproved in
11 writing within 30 days after the receipt shall be construed to be approved and
12 payment must follow within 30 days. No claim which has been approved and
13 paid may be charged back to the dealer unless it can be shown that the claim
14 was false or fraudulent, that the repairs were not made properly or were
15 unnecessary to correct the defective condition, or that the dealer failed to
16 reasonably substantiate the claim either in accordance with the manufacturer's
17 reasonable written procedures or by other reasonable means.

18 (f) A manufacturer shall retain the right to audit warranty claims for a
19 period of one year after the date on which the claim is paid.

20 (g) A manufacturer shall retain the right to audit all incentive and
21 reimbursement programs for a period of one year after the date on which the

1 claim is paid and charge back any amounts paid on claims that are false or
2 unsubstantiated.

3 (h) Any chargeback resulting from any audit shall not be made until a final
4 order is issued by the Vermont motor vehicle industry board if a protest to the
5 proposed chargeback is filed within 30 days of the notification of the final
6 amount claimed by the manufacturer, to be due after exhausting any procedure
7 established by the manufacturer to contest the chargeback, other than
8 arbitration. The manufacturer has the burden of proof in any proceeding filed
9 at the board under this section.

10 (i) It is unlawful for a franchisor, manufacturer, factory branch, distributor
11 branch, or subsidiary to own, operate, or control, either directly or indirectly, a
12 motor vehicle warranty or service facility located in the state except on an
13 emergency or interim basis or if no qualified applicant has applied for
14 appointment as a dealer in a market previously served by a new motor vehicle
15 dealer of that manufacturer's line make.

16 § 4087. TRANSPORTATION DAMAGES

17 (a) Notwithstanding the terms, provisions, or conditions of any agreement
18 or franchise, the manufacturer is liable for all damages to motor vehicles
19 before delivery to a carrier or transporter.

20 (b) If a new motor vehicle dealer determines the method of transportation,
21 the risk of loss passes to the dealer upon delivery of the vehicle to the carrier.

1 (c) In every other instance, the risk of loss remains with the manufacturer
2 until such time as the new motor vehicle dealer or his designee accepts the
3 vehicle from the carrier.

4 (d)(1) On any new motor vehicle, a manufacturer or distributor shall
5 disclose in writing to a dealer and a dealer shall disclose in writing to the
6 ultimate purchaser any uncorrected damage or any corrected damage to the
7 vehicle, as measured by retail repair costs, if the corrected damage exceeds the
8 following percentage of the manufacturer's suggested retail price, as defined in
9 15 U.S.C. §§ 1231-1233:

10 (A) five percent up to the first \$10,000.00; and

11 (B) two percent on any amount over \$10,000.00.

12 (2) Damage to glass, tires, wheels and bumpers shall be excluded from
13 the calculation required in this subsection when replaced by identical
14 manufacturer's original equipment.

15 § 4088. PRODUCT LIABILITY INDEMNIFICATION

16 Notwithstanding the terms of any franchise agreement, it shall be a
17 violation of this law for any new motor vehicle manufacturer to fail to
18 indemnify and hold harmless its franchised dealers against any judgment or
19 settlement for damages, after reasonable notice of the proposed settlement to
20 the manufacturer, including, but not limited to, court costs and reasonable
21 attorneys' fees of the new motor vehicle dealer, arising out of complaints,

1 claims or lawsuits including, but not limited to, strict liability, negligence,
2 misrepresentation, warranty (express or implied), or rescission of the sale as is
3 defined in section 2-608 of the Uniform Commercial Code, to the extent that
4 the judgment or settlement relates to the alleged defective or negligent
5 manufacture, assembly or design of new motor vehicles, parts or accessories or
6 other functions by the manufacturer, beyond the control of the dealer.

7 § 4089. TERMINATION; CANCELLATION OR NONRENEWAL

8 (a) Notwithstanding the terms, provisions or conditions of any franchise or
9 notwithstanding the terms or provisions of any waiver, no manufacturer shall
10 cancel, terminate or fail to renew any franchise with a licensed new motor
11 vehicle dealer unless the manufacturer has:

12 (1) satisfied the notice requirement of section 4090 of this title; ~~and~~

13 (2) has good cause for cancellation, termination, or nonrenewal; ~~and~~

14 (3) has acted in good faith as defined in this chapter; and

15 (4)(A) The Vermont motor vehicle industry board finds after a hearing
16 that the manufacturer has acted in good faith and there is good cause for
17 cancellation, termination, failure to renew, or refusal to continue any franchise
18 relationship. The new motor vehicle dealer may file a protest with the board
19 within 45 days after receiving the 90-day notice. A copy of the protest shall be
20 served by the new motor vehicle dealer on the manufacturer. When a protest is
21 filed to challenge the cancellation, termination, or nonrenewal of a franchise

1 agreement under this section, such franchise agreement shall remain in full
2 force and effect, and such franchisee shall retain all rights and remedies
3 pursuant to the terms and conditions of such franchise agreement, including the
4 right to sell or transfer such franchisee's ownership interest for a period of six
5 months following a final determination by the board and any appeal; or

6 (B) The manufacturer, distributor, or branch or division thereof has
7 received the written consent of the new motor vehicle dealer; or

8 (C) The appropriate period for filing a protest has expired.

9 (b) For purposes of this section, good cause for terminating, canceling, or
10 failing to renew a franchise shall be limited to failure by the franchisee to
11 substantially comply with those requirements imposed upon the franchisee by
12 the franchise as set forth in subdivision (c)(1) of this section.

13 (c) Notwithstanding the terms, provisions or conditions of any agreement
14 or franchise or the terms or provisions of any waiver, good cause shall exist for
15 the purposes of a termination, cancellation, or nonrenewal when:

16 (1) there is a failure by the new motor vehicle dealer to comply with a
17 provision of the franchise which provision is both reasonable and of material
18 significance to the franchise relationship, provided that ~~the dealer has been~~
19 ~~notified in writing of the failure within~~ compliance on the part of the new
20 motor vehicle dealer is reasonably possible and the manufacturer, distributor,
21 or branch or division thereof first acquired actual or constructive knowledge of

1 such failure not more than 180 days after the manufacturer first acquired
2 knowledge of such failure prior to the date on which notification is given
3 pursuant to section 4090 of this title;

4 (2) if the failure by the new motor vehicle dealer, defined in
5 subdivision (1) of this subsection, relates to the performance of the new motor
6 vehicle dealer in sales or service, then good cause shall be defined as the
7 failure of the new motor vehicle dealer to comply with reasonable performance
8 criteria established by the manufacturer if the new motor vehicle dealer was
9 apprised by the manufacturer in writing of such failure; and:

10 (A) ~~said~~ the notification stated that notice was provided ~~of~~ for failure
11 of performance pursuant to this section;

12 (B) the new motor vehicle dealer was afforded a reasonable
13 opportunity, for a period of not less than six months, to comply with such
14 criteria; ~~and~~

15 (C) the new motor vehicle dealer did not demonstrate substantial
16 progress towards compliance with the manufacturer's performance criteria
17 during such period and the new motor vehicle dealer's failure was not
18 primarily due to economic or market factors within the dealer's relevant
19 market area beyond the dealer's control; and

1 (D) the performance criteria established by the manufacturer are fair,
2 reasonable, and equitable and are uniformly applied to all franchisees of the
3 manufacturer.

4 ~~(e)~~(d) The manufacturer shall have the burden of proof under this section
5 for showing that it has acted in good faith, that all notice requirements have
6 been satisfied, and that there was good cause for the franchise termination,
7 cancellation, nonrenewal, or noncontinuance.

8 (e) Notwithstanding the terms, provisions, or conditions of any agreement
9 or franchise, or the terms or provisions of any waiver, the following do not
10 constitute good cause for the termination, cancellation, nonrenewal, or
11 noncontinuance of a franchise:

12 (1) The change of ownership of the new motor vehicle dealer's
13 dealership, excluding any change in ownership which would have the effect of
14 the sale of the franchise without the reasonable consent of the manufacturer,
15 distributor, or branch or division thereof.

16 (2) The fact that the new motor vehicle dealer refused to purchase or
17 accept delivery of any new motor vehicle parts, accessories, or any other
18 commodity or services not ordered by the new motor vehicle dealer.

19 (3) The fact that the new motor vehicle dealer owns, has an investment
20 in, participates in the management of, or holds a license for the sale of another
21 make, line, or brand of new motor vehicle, or that the new motor vehicle dealer

1 has established another make, line, or brand of new motor vehicle in the same
2 dealership facilities as those of the manufacturer, distributor, or branch or
3 division thereof, provided that the new motor vehicle dealer maintains a
4 reasonable line of credit for each make or line of new motor vehicle and that
5 the new motor vehicle dealer remains in substantial compliance with any
6 reasonable facilities' requirements of the manufacturer, distributor, or branch
7 or division thereof.

8 (4) The fact that the new motor vehicle dealer sells or transfers
9 ownership of the dealership or sells or transfers capital stock in the dealership
10 to the new motor vehicle dealer's spouse, son, or daughter. The manufacturer,
11 distributor, or branch or division thereof shall give effect to such change in
12 ownership unless the transfer of the new motor vehicle dealer's license is
13 denied or the new owner is unable to license, as the case may be.

14 § 4090. NOTIFICATION OF TERMINATION; CANCELLATION AND
15 NONRENEWAL

16 (a) Notwithstanding the terms, provisions, or conditions of any franchise
17 prior to the termination, cancellation, or nonrenewal of any franchise, the
18 manufacturer shall furnish notification of such termination, cancellation or
19 nonrenewal to the new motor vehicle dealer as follows:

20 (1) in the manner described in subsection (b) of this section; and

1 (2) not less than 90 days prior to the effective date of such termination,
2 cancellation, or nonrenewal; or

3 (3) not less than ~~45~~ 180 days prior to the effective date of such
4 termination, cancellation, or nonrenewal ~~with respect to any of the following~~
5 which occurs as a result of:

6 (A) ~~insolvency of the new motor vehicle dealer, or filing of any~~
7 ~~petition by or against the new motor vehicle dealer under any bankruptcy or~~
8 ~~receivership law;~~

9 (B) ~~failure of the new motor vehicle dealer to conduct its customary~~
10 ~~sales and service operations during its customary business hours for seven~~
11 ~~consecutive business days, except for acts of God or circumstances beyond the~~
12 ~~direct control of the new motor vehicle dealer;~~

13 (C) ~~conviction of the new motor vehicle dealer, or any owner or~~
14 ~~operator thereof, of any crime which is punishable by imprisonment;~~

15 (D) ~~revocation of any license which the new motor vehicle dealer is~~
16 ~~required to have to operate a dealership~~ any change in ownership, operation, or
17 control of all or any part of the business of the manufacturer, whether by sale
18 or transfer of assets, corporate stock, or other equity interest, assignment,
19 merger, consolidation, combination, joint venture, redemption, operation of
20 law, or otherwise; or

1 (B) the termination, suspension, or cessation of a part or all of the
2 business operations of the manufacturer; or

3 (C) discontinuance of the sale of the product line or a change in
4 distribution system by the manufacturer whether through a change in
5 distributors or through the manufacturer's decision to cease conducting
6 business through a distributor altogether.

7 ~~(4) not less than 180 days prior to the effective date of such termination~~
8 ~~or cancellation where the manufacturer or distributor is discontinuing the sale~~
9 ~~of the product line.~~

10 (b) Notification under this section shall be in writing; shall be by certified
11 mail or personally delivered to the new motor vehicle dealer; and shall contain:

12 (1) a statement of intention to terminate, cancel, or not to renew the
13 franchise; and

14 (2) a statement of the reasons for the termination, cancellation, or
15 nonrenewal; and

16 (3) the date on which the termination, cancellation, or nonrenewal takes
17 effect.

18 § 4091. PAYMENTS

19 (a) ~~Upon~~ Within 90 days of the termination, nonrenewal, or cancellation of
20 any franchise, pursuant to ~~this chapter~~ section 4089 of this title or to the
21 termination, nonrenewal, or cancellation of a franchise by the franchisee or by

1 mutual agreement, the new motor vehicle dealer shall be ~~allowed fair and~~
2 ~~reasonable compensation~~ paid by the manufacturer for the:

3 (1) ~~new motor vehicle inventory which has been acquired from the~~
4 ~~manufacturer;~~

5 ~~(2) supplies and parts which have been acquired from the manufacturer;~~

6 ~~(3) equipment and furnishings provided the new motor vehicle dealer~~
7 ~~purchased from the manufacturer or its approved sources; and~~

8 ~~(4) special tools.~~ dealer cost plus any charges by the manufacturer
9 thereof for distribution, delivery, and taxes paid by the dealer, less all
10 allowances paid to the dealer by the manufacturer for all new motor vehicle
11 inventory regardless of the original source of the vehicle;

12 (2) the dealer cost of each new, unused, undamaged, and unsold part or
13 accessory if such part or accessory is in the current parts catalogue and is still
14 in the original, resaleable merchandising package;

15 (3) the fair market value of all special tools and automotive service
16 equipment owned by the dealer which were recommended in writing and
17 designated as special tools and equipment by the manufacturer, distributor, or
18 branch or division thereof and purchased from or at the request of the
19 manufacturer or distributor, if the tools and equipment are in usable and good
20 condition, normal wear and tear excepted;

1 (4) the fair market value of each undamaged sign owned by the dealer
2 which bears a trademark, trade name, or commercial symbol used or claimed
3 by the manufacturer if the sign was purchased from or at the request of the
4 manufacturer, distributor, or branch or division thereof;

5 (5) the cost of transporting, handling, packing, and loading of motor
6 vehicles, parts, signs, tools, and special equipment subject to repurchase by the
7 manufacturer.

8 (b) In addition to the other payments set forth in this section, if a
9 termination, cancellation, or nonrenewal is premised upon any of the
10 occurrences set forth in subdivision 4090(a)(3) of this title, then the
11 manufacturer shall be liable to the dealer for an amount at least equivalent to
12 the fair market value of the motor vehicle franchise on:

13 (1) the date the franchisor announces the action which results in
14 termination, cancellation, or nonrenewal;

15 (2) the date the action which results in termination, cancellation, or
16 nonrenewal first became general knowledge; or

17 (3) the day 12 months prior to the date on which the notice of
18 termination, cancellation, or nonrenewal is issued, whichever amount is higher.

19 ~~(b)(c) Such fair and reasonable compensation for the above shall be paid by~~
20 ~~the manufacturer.~~ Payment is due within 90 days of the effective date of
21 ~~termination, cancellation, or nonrenewal, provided the new motor vehicle~~

1 ~~dealer has clear title to the inventory and other items and is in a position to~~
2 ~~convey that title to the manufacturer.~~

3 (d) The manufacturer may avoid paying fair market value of the motor
4 vehicle franchise to the dealer under subdivision (a)(6) of this section if the
5 franchisor, or another motor vehicle franchisor pursuant to an agreement with
6 the franchisor, offers the franchisee a replacement motor vehicle franchise
7 substantially similar to the existing motor vehicle franchise which takes effect
8 no later than the date of the termination, cancellation, or nonrenewal of the
9 franchisee's existing motor vehicle franchise.

10 § 4092. DEALERSHIP FACILITIES ASSISTANCE UPON
11 TERMINATION, CANCELLATION, OR NONRENEWAL

12 (a) In the event of a termination, cancellation, or nonrenewal under this
13 chapter; and

14 (1) the new motor vehicle dealer is leasing the dealership facilities from
15 a lessor other than the manufacturer, the manufacturer shall pay the new motor
16 vehicle dealer a sum equivalent to the rent for the unexpired term of the lease
17 or one year's rent, whichever is less; or

18 (2) if the new motor vehicle dealer owns the dealership facilities, the
19 manufacturer shall pay the new motor vehicle dealer a sum equivalent to the
20 reasonable rental value of the dealership facilities for one year.

1 (b) If the termination, cancellation, or nonrenewal is pursuant to subsection
2 4090(b) of this title, then, with respect to such facilities as were required as a
3 condition of the franchise and used to conduct sales and service operations
4 related to the franchise product, the manufacturer or distributor shall in
5 addition to the relief described in subsection (a) of this section:

6 (1) assume the obligations for any lease of the dealership facilities; or

7 (2) arrange for a new lease of any dealership facilities; or

8 (3) negotiate a lease termination for the dealership facilities at the
9 manufacturer's expense.

10 (c) If, in an action for damages under this section, the manufacturer or
11 distributor fails to prove either that the manufacturer or distributor has acted in
12 good faith or that there was good cause for the franchise termination,
13 cancellation or nonrenewal, then the court, agency or commission shall order,
14 in addition to any other damages under this section, that the manufacturer or
15 distributor pay the new motor vehicle dealer an amount equal to the value of
16 the dealership, as an ongoing business location.

17 § 4093. RIGHT OF DESIGNATED FAMILY MEMBER TO SUCCEED IN
18 OWNERSHIP

19 (a) Any owner of a new motor vehicle dealer may appoint by will, or any
20 other written instrument, a designated family member to succeed in the
21 ownership interest of the new motor vehicle dealer.

1 (b) Unless there exists good cause for refusal to honor succession on the
2 part of the manufacturer or distributor, any designated family member of a
3 deceased or incapacitated owner of a new motor vehicle dealer may succeed to
4 the ownership of the new motor vehicle dealer under the existing franchise
5 provided that:

6 (1) the designated family member gives the manufacturer or distributor
7 written notice of his or her intention to succeed to the ownership of the new
8 motor vehicle dealer within 120 days of the owner's death or incapacity; and

9 (2) the designated family member agrees to be bound by all the terms
10 and conditions of the franchise.

11 (c) The manufacturer or distributor may request, and the designated family
12 member shall provide, promptly upon said request, personal and financial data
13 that are reasonably necessary to determine whether the succession should be
14 honored.

15 § 4094. REFUSAL TO HONOR SUCCESSION TO OWNERSHIP; NOTICE
16 REQUIRED

17 (a) If a manufacturer or distributor believes that good cause exists for
18 refusing to honor the succession to the ownership of a new motor vehicle
19 dealer by a family member of a deceased or incapacitated owner of a new
20 motor vehicle dealer under the existing franchise agreement, the manufacturer
21 or distributor may, not more than 60 days following receipt of notice of the

1 designated family member's intent to succeed to the ownership of the new
2 motor vehicle dealer, or any personal or financial data which it has requested,
3 serve upon the designated family member notice of its refusal to honor the
4 succession and of its intent to discontinue the existing franchise with the dealer
5 no sooner than 90 days from the date the notice is served.

6 (b) The notice must state the specific grounds for the refusal to honor the
7 succession and of its intent to discontinue the existing franchise with the new
8 motor vehicle dealer no sooner than 90 days from the date the notice is served.

9 (c) If notice of refusal and discontinuance is not timely served upon the
10 family member, the franchise shall continue in effect subject to termination
11 only as otherwise permitted by this chapter.

12 (d) In the event of a conflict between the written instrument filed by the
13 motor vehicle dealer with the manufacturer designating a certain person as his
14 or her successor and the provisions of this section, the written instrument filed
15 with the manufacturer shall govern.

16 § 4095. BURDEN OF PROOF

17 In determining whether good cause for the refusal to honor the succession
18 exists, the manufacturer, distributor, factory branch, or importer has the burden
19 of proving that the successor is a person who is not of good moral character or
20 does not meet the franchisor's existing and reasonable standards and,

1 considering the volume of sales and service of the new motor vehicle dealer,
2 uniformly applied minimum business experience standards in the market area.

3 § 4096. UNLAWFUL ACTS BY MANUFACTURERS OR DISTRIBUTORS

4 It shall be a violation of this chapter, for any manufacturer, as defined under
5 this chapter, ~~to require or to~~ attempt to require, coerce, or attempt to coerce
6 any new motor vehicle dealer in this state:

7 (1) to order or accept delivery of any new motor vehicle, part or
8 accessory thereof, equipment or any other commodity not required by law or a
9 recall campaign which shall not have been voluntarily ordered by the new
10 motor vehicle dealer; except that this subdivision is not intended to modify or
11 supersede any terms or provisions of the franchise requiring new motor vehicle
12 dealers to market a representative line of those motor vehicles which the
13 manufacturer or distributor is publicly advertising;

14 (2) to order or accept delivery of any new motor vehicle with special
15 features, accessories or equipment not included in the list price of such motor
16 vehicles as publicly advertised by the manufacturer or distributor;

17 (3) to participate monetarily in an advertising campaign or contest, or to
18 purchase any promotional materials, training materials, showroom or other
19 display decorations or materials at the expense of the new motor vehicle
20 dealer, or to require any dealer without his or her prior written agreement to
21 participate in any manufacturer's rebate program or to require a dealer to

1 contribute to a manufacturer's warranty rebate program, either by discount or
2 otherwise without prior notification and prior written consent of the dealer;

3 (4) to enter into any agreement with the manufacturer or to do any other
4 act prejudicial to the new motor vehicle dealer by threatening to terminate or
5 cancel a franchise or any contractual agreement existing between the dealer
6 and the manufacturer; except that this subdivision is not intended to preclude
7 the manufacturer or distributor from insisting on compliance with the
8 reasonable terms or provisions of the franchise or other contractual agreement,
9 and notice in good faith to any new motor vehicle dealer of the new motor
10 vehicle dealer's violation of such terms or provisions shall not constitute a
11 violation of the chapter;

12 (5) to change the capital structure of the new motor vehicle dealer or the
13 means by or through which the new motor vehicle dealer finances the
14 operation of the dealership provided that the new motor vehicle dealer at all
15 times meets any reasonable capital standards determined by the manufacturer
16 in accordance with uniformly applied criteria; and also provided that no change
17 in the capital structure shall cause a change in the principal management or
18 have the effect of a sale of the franchise without the consent of the
19 manufacturer or distributor; said consent shall not be unreasonably withheld;

20 (6) to refrain from participation in the management of, investment in, or
21 the acquisition of any other line of new motor vehicle or related products;

1 provided, however, that this subdivision does not apply unless the new motor
2 vehicle dealer maintains a reasonable line of credit for each make or line of
3 new motor vehicle, the new motor vehicle dealer remains in compliance with
4 any reasonable facilities requirements of the manufacturer, and no change is
5 made in the principal management of the new motor vehicle dealer;

6 (7) to ~~prospectively~~ assent to a release, assignment, novation, waiver, or
7 estoppel which would relieve any person from liability to be imposed by this
8 law or to require any controversy between a new motor vehicle dealer and a
9 manufacturer, distributor, or representative, to be referred to any person other
10 than the duly constituted courts of the state or the United States of America, if
11 such referral would be binding upon the new motor vehicle dealer;

12 (8) to establish or maintain exclusive facilities, personnel, or display
13 space;

14 (9) to change location of the dealership or to make any substantial
15 alterations to the dealership premises or facilities when to do so would be
16 unreasonable or without written assurance of a sufficient supply of new motor
17 vehicles so as to justify such an expansion in light of the current market and
18 economic conditions.

19 § 4097. MANUFACTURER VIOLATIONS

20 It shall be a violation of this chapter for any manufacturer defined under this
21 chapter:

1 (1) to delay, refuse, or fail to deliver new motor vehicles or new motor
2 vehicle parts or accessories in a reasonable time, and in reasonable quantity
3 relative to the new motor vehicle dealer's facilities and sales potential in the
4 new motor vehicle dealer's relevant market area, after acceptance of an order
5 from a new motor vehicle dealer having a franchise for the retail sale of any
6 new motor vehicle sold or distributed by the manufacturer, any new motor
7 vehicle, parts or accessories to new vehicles as are covered by such franchise,
8 if such vehicle, parts, accessories are publicly advertised as being available for
9 delivery or actually being delivered. This subdivision is not violated, however,
10 if failure is caused by acts or causes beyond the control of the manufacturer;

11 (2) to refuse to disclose to any new motor vehicle dealer, handling the
12 same line-make, the manner and mode of distribution of that line-make within
13 the ~~relevant market area~~ state;

14 (3) to obtain money, goods, service, or any other benefit from any other
15 person with whom the new motor vehicle dealer does business, on account of,
16 or in relation to, the transaction between the new motor vehicle dealer and such
17 other person, other than for compensation for services rendered, unless such
18 benefit is promptly accounted for, and transmitted to, the new motor vehicle
19 dealer;

20 (4) to increase prices of new motor vehicles which the new motor
21 vehicle dealer had ordered for private retail consumers prior to the new motor

1 vehicle dealer's receipt of the written official price increase notification. A
2 sales contract signed by a private retail consumer shall constitute evidence of
3 each such order provided that the vehicle is in fact delivered to that consumer.
4 In the event of manufacturer price reductions or cash rebates paid to the new
5 motor vehicle dealer, the amount of any reduction or rebate received by a new
6 motor vehicle dealer shall be passed on to the private retail consumer by the
7 new motor vehicle dealer. Price reductions shall apply to all vehicles in the
8 dealer's inventory which were subject to the price reduction. Price differences
9 applicable to a new model or series shall not be considered a price increase or
10 price decrease. Price changes caused by either the addition to a motor vehicle
11 of required or optional equipment; or revaluation of the United States dollar, in
12 the case of foreign-make vehicles or components; or an increase in
13 transportation charges due to increased rates imposed by common carriers shall
14 not be subject to the provisions of this subdivision;

15 (5) to offer any refunds or other types of inducements to any person for
16 the purchase of new motor vehicles of a certain line or make to be sold to the
17 state or any political subdivision thereof without making the same offer
18 available upon request to all other new motor vehicle dealers in the same
19 line-make within the ~~relevant market area~~ state;

20 (6) to release to any outside party, except under subpoena or as
21 otherwise required by law or in an administrative, judicial or arbitration

1 proceeding involving the manufacturer or new motor vehicle dealer, any
2 business, financial, or personal information which may be from time-to-time
3 provided by the new motor vehicle dealer to the manufacturer, without the
4 express written consent of the new motor vehicle dealer;

5 (7) to deny any new motor vehicle dealer the right of free association
6 with any other new motor vehicle dealer for any lawful purpose;

7 (8) to ~~unfairly~~ compete with a new motor vehicle dealer in the same
8 line-make operating under an agreement or franchise from the aforementioned
9 manufacturer in the relevant market area. A manufacturer shall not, however,
10 be deemed to be competing when operating a dealership either temporarily for
11 a reasonable period, or in a bona fide retail operation which is for sale to any
12 qualified independent person at a fair and reasonable price, or in a bona fide
13 relationship in which an independent person has made a significant investment
14 subject to loss in the dealership and can reasonably expect to acquire full
15 ownership of the dealership on reasonable terms and conditions;

16 (9) to unfairly discriminate among its new motor vehicle dealers with
17 respect to warranty reimbursement;

18 (10) to unreasonably withhold consent to a change in executive
19 management or the sale, transfer, or exchange of the franchise to a qualified
20 buyer capable of being licensed as a new motor vehicle dealer in this state. If a
21 new motor vehicle dealer desires to make a change in its executive

1 management or ownership or to sell its principal assets, the new motor vehicle
2 dealer will give the franchisor written notice of the proposed change or sale.

3 The franchisor shall not arbitrarily refuse to agree to such proposed change or
4 sale and may not disapprove or withhold approval of such change or sale
5 unless the franchisor can prove that:

6 (A) its decision is not arbitrary; and

7 (B) the new management, owner, or transferee is unfit or unqualified
8 to be a dealer based on the franchisor's prior written, reasonable, objective
9 standards or qualifications which directly relate to the prospective transferee's
10 business experience, moral character, and financial qualifications;

11 (11) to fail to respond in writing to a request for consent as specified in
12 subdivision (10) of this section within 60 days of receipt of a written request
13 on the forms, if any, generally utilized by the manufacturer or distributor for
14 such purposes and containing the information required therein. Such failure to
15 respond shall be deemed to be consent to the request;

16 (12) to unfairly prevent a new motor vehicle dealer from receiving fair
17 and reasonable compensation for the value of the new motor vehicle
18 dealership;

19 (13) to engage in any predatory practice ~~against a new motor vehicle~~
20 ~~dealer~~ or in any action or failure to act with respect to a dealer if the action or

1 failure to act is arbitrary, in bad faith, or discriminatory compared to similarly
2 situated dealers;

3 (14) to terminate any franchise solely because of the death or incapacity
4 of an owner who is not listed in the franchise as one on whose expertise and
5 abilities the manufacturer relied in the granting of the franchise;

6 (15) to require a motor vehicle franchisee to agree to a term or condition
7 in a franchise, or in any lease or agreement ancillary or collateral to a
8 franchise, as a condition to the offer, grant, or renewal of the franchise, lease,
9 or agreement, that:

10 (A) Requires the motor vehicle franchisee to waive trial by jury in
11 actions involving the motor vehicle franchisor; or

12 (B) Specifies the jurisdictions, venues, or tribunals in which disputes
13 arising with respect to the franchise, lease, or agreement shall or shall not be
14 submitted for resolution or otherwise prohibits a motor vehicle franchisee from
15 bringing an action in a particular forum otherwise available under the law of
16 this state;

17 (C) Requires that disputes between the motor vehicle franchisor and
18 motor vehicle franchisee be submitted to arbitration or to any other binding
19 alternate dispute resolution procedure; provided, however, that any franchise,
20 lease, or agreement may authorize the submission of a dispute to arbitration or
21 to binding alternate dispute resolution if the motor vehicle franchisor and

1 motor vehicle franchisee voluntarily agree to submit the dispute to arbitration
2 or binding alternate dispute resolution at the time the dispute arises;

3 (D) Provides that in any administrative or judicial proceeding arising
4 from any dispute with respect to the agreements in this section that the
5 franchisor shall be entitled to recover its costs, reasonable attorney's fees and
6 other expenses of litigation from the franchisee; or

7 (E) Grants the manufacturer an option to purchase the franchise, or
8 real estate or business assets of the franchisee;

9 (16) to impose unreasonable standards of performance or unreasonable
10 facilities, financial, operating, or other requirements upon a motor vehicle
11 franchisee;

12 (17) to fail or refuse to sell or offer to sell to all motor vehicle
13 franchisees of a line make, all models manufactured for that line make, or
14 requiring a dealer to pay any extra fee; require a dealer to execute a separate
15 franchise agreement, purchase unreasonable advertising displays or other
16 materials, or relocate, expand, improve, remodel, renovate, recondition, or alter
17 the dealer's existing facilities; or provide exclusive facilities as a prerequisite
18 to receiving a model or series of vehicles. The failure to deliver any such
19 motor vehicle, however, shall not be considered a violation of this section if
20 the failure is due to a lack of manufacturing capacity or to a strike or labor

1 difficulty, a shortage of materials, a freight embargo, or other cause over which
2 the franchisor has no control;

3 (18) to prevent or attempt to prevent any motor vehicle dealer or any
4 officer, partner, or stockholder of any motor vehicle dealer from transferring
5 any part of the interest of any of them to any other person; provided, however,
6 that no dealer, officer, partner, or stockholder shall have the right to sell,
7 transfer, or assign the franchise or power of management or control without the
8 consent of the manufacturer or distributor unless such consent is unreasonably
9 withheld. Failure to respond within 60 days of receipt of a written request for
10 consent to a sale, transfer, or assignment shall be deemed consent to the
11 request;

12 (19) to provide any term or condition in any lease or other agreement
13 ancillary or collateral to a franchise, which term or condition directly or
14 indirectly violates this title;

15 (20) to use a promotional program or device or an incentive, payment,
16 or other benefit, whether paid at the time of sale of the new motor vehicle to
17 the dealer or later, that results in the sale of or offer to sell a new motor vehicle
18 at a lower price, including the price for vehicle transportation, than the price at
19 which the same model similarly equipped is offered or is available to another
20 dealer in the state during a similar time period. This subdivision shall not

1 prohibit a promotional or incentive program that is available functionally and
2 equally to competing dealers of the same line make in the state;

3 (21) to vary the price charged to any of its franchised new motor vehicle
4 dealers located in this state for new motor vehicles based on the dealer's
5 purchase of new facilities, supplies, tools, equipment, or other merchandise
6 from the manufacturer, the dealer's relocation, remodeling, repair, or
7 renovation of existing dealerships or construction of a new facility, the dealer's
8 participation in training programs sponsored, endorsed, or recommended by
9 the manufacturer, whether or not the dealer is dualed with one or more other
10 line makes of new motor vehicles, the dealer's sales penetration, the dealer's
11 sales volume, the dealer's level of sales or customer service satisfaction, the
12 dealer's purchase of advertising materials, signage, nondiagnostic computer
13 hardware or software, communications devices, or furnishings, or the dealer's
14 participation in used motor vehicle inspection or certification programs
15 sponsored or endorsed by the manufacturer. The price of the vehicle, for
16 purposes of this subdivision, shall include the manufacturer's use of rebates,
17 credits, or other consideration that has the effect of causing a variance in the
18 price of new motor vehicles offered to its franchised dealers located in the
19 state;

20 (22) to modify a franchise during the term of the franchise or upon its
21 renewal if the modification substantially and adversely affects the new motor

1 vehicle dealer's rights, obligations, investment, or return on investment
2 without giving 60 days' written notice of the proposed modification to the new
3 vehicle dealer unless the modification is required by law, court order, or the
4 board. Within the 60-day notice period, the new vehicle dealer may file with
5 the board and serve notice upon the manufacturer a protest requesting a
6 determination of whether there is good cause for permitting the proposed
7 modification. Multiple protests pertaining to the same proposed modification
8 shall be consolidated for hearing. The proposed modification shall not take
9 effect pending the determination of the matter. The manufacturer shall have
10 the burden of establishing good cause for the proposed modification. In
11 determining whether there is good cause for permitting a proposed
12 modification, the board shall consider any relevant factors, including:
13 (A) The reasons for the proposed modification.
14 (B) Whether the proposed modification is applied to or affects all
15 new vehicle dealers in a nondiscriminatory manner.
16 (C) Whether the proposed modification will have a substantial and
17 adverse effect upon the new vehicle dealer's investment or return on
18 investment.
19 (D) Whether the proposed modification is in the public interest.
20 (E) Whether the proposed modification is necessary to the orderly
21 and profitable distribution of products by the manufacturer.

1 (F) Whether the proposed modification is offset by other
2 modifications beneficial to the new vehicle dealer;

3 (23) to engage in any action which is arbitrary, in bad faith, or
4 unconscionable;

5 (24) to change the relevant market area set forth in the franchise
6 agreement without good cause. For purposes of this subdivision, good cause
7 shall include changes in the dealer's registration pattern, demographics,
8 customer convenience, and geographic barriers.

9 § 4098. LIMITATIONS ON ESTABLISHING OR RELOCATING
10 DEALERS

11 (a) In the event that a manufacturer seeks to enter into a franchise
12 establishing an additional new motor vehicle dealer or relocating an existing
13 new motor vehicle dealer within or into a relevant market area where the same
14 line-make is then represented, the manufacturer shall in writing first give
15 notice to the Vermont motor vehicle industry board and notify each new motor
16 vehicle dealer in such line-make in the relevant market area of the intention to
17 establish an additional dealer or to relocate an existing dealer within or into
18 that market area. Within 20 days of receiving such notice or within 20 days
19 after the end of any appeal procedure provided by the manufacturer, any such
20 new motor vehicle dealer may file ~~with a court having jurisdiction an action a~~
21 protest with the board opposing the establishing or relocating of the new motor

1 vehicle dealer. A copy of the protest shall be served on the manufacturer
2 within the 20-day period. When such a protest is filed, ~~the court shall inform~~
3 ~~the manufacturer that a timely protest has been filed, and that~~ the manufacturer
4 shall not establish or relocate the proposed new motor vehicle dealer until the
5 ~~court~~ board has held a hearing, nor thereafter, if the ~~court~~ board has determined
6 that there is not good cause for ~~not~~ permitting the addition or relocation of such
7 new motor vehicle dealer.

8 (b) This section does not apply:

9 (1) to the relocation of an existing dealer within that dealer's relevant
10 market area, provided that the relocation not be at a site within six miles of a
11 licensed new motor vehicle dealer for the same line-make of motor vehicle; or

12 (2) if the proposed new motor vehicle dealer is to be established at or
13 within two miles of a location at which a former licensed new motor vehicle
14 dealer for the same line-make of new motor vehicle had ceased operating
15 within the previous two years.

16 (c) In determining whether good cause has been established for ~~not~~
17 entering into or relocating an additional new motor vehicle dealer for the same
18 line-make, the court shall take into consideration the existing circumstances,
19 including, but not limited to:

20 (1) permanency of the investment of both the existing and proposed new
21 motor vehicle dealers;

1 (2) growth or decline in population and new car registrations in the
2 relevant market area;

3 (3) effect on the consuming public in the relevant market area;

4 (4) whether it is injurious or beneficial to the public welfare for an
5 additional new motor vehicle dealer to be established;

6 (5) whether the new motor vehicle dealers of the same line-make in that
7 relevant market area are providing adequate competition and convenient
8 customer care for the motor vehicles of the line-make in the market area which
9 shall include the adequacy of motor vehicle sales and service facilities,
10 equipment, supply of motor vehicle parts, and qualified service personnel;

11 (6) whether the establishment of an additional new motor vehicle dealer
12 would increase competition, and therefore be in the public interest; and

13 (7) the effect that the proposed franchise would have on the stability of
14 existing franchisees in the same line make in the relevant market area.

15 (d) At any hearing conducted by the board under this section, the
16 manufacturer seeking to establish an additional new motor vehicle dealership
17 or relocate an existing new motor vehicle dealership shall have the burden of
18 proof in establishing that good cause exists.

19 § 4099. CIVIL ACTIONS FOR VIOLATIONS

20 Notwithstanding the terms, provisions, or conditions of any agreement or
21 franchise or the terms or provisions of any waiver, any consumer who is

1 injured by a violation of this chapter, or any party to a franchise who is so
2 injured in his business or property by a violation of this chapter relating to that
3 franchise, or any person so injured because he or she refuses to accede to a
4 proposal for an arrangement which, if consummated, would be in violation of
5 this chapter, may bring a civil action in a court having jurisdiction to enjoin
6 further violations, and to recover the actual damages sustained by him or her
7 together with the costs of the suit, including a reasonable attorney's fee. An
8 action, filed in a court of competent jurisdiction, that gives rise or could give
9 rise to a claim or defense under this chapter must be stayed if, within 60 days
10 after the date of filing of the complaint or service of process, whichever is
11 later, a party to the action files a complaint with the board asserting the claims
12 or defenses under this chapter.

13 § 4100. APPLICABILITY

14 The provisions of this chapter shall apply to the conduct of all persons
15 affected by the presumptions of this chapter situated in this state. Any person
16 who engages directly or indirectly in purposeful contacts within this state in
17 connection with the offering or advertising for sale of, or has business dealings
18 with respect to, a motor vehicle within the state shall be subject to the
19 provisions of this chapter and the jurisdiction of the courts of this state. Any
20 and all amendments to this chapter shall apply retroactively to the fullest extent
21 permitted by law.

1 § 4101a. AGREEMENTS GOVERNED

2 (a) All written and oral agreements of any type between a manufacturer or
3 distributor and a motor vehicle dealer shall be subject to the provisions of this
4 chapter, and provisions of such agreements that are inconsistent with this
5 chapter shall be void as against public policy and unenforceable in court or
6 with the board.

7 (b) Every new selling agreement or amendment made to such agreement
8 between a motor vehicle dealer and a manufacturer or distributor shall include,
9 and if omitted, shall be presumed to include, the following language: "If any
10 provision herein contravenes the valid laws or rules of the state of Vermont,
11 such provision shall be deemed to be modified to conform to such laws or
12 rules; or if any provision herein, including arbitration provisions, denies, or
13 purports to deny access to the procedures, forums, or remedies provided for by
14 such laws or rules, such provision shall be void and unenforceable; and all
15 other terms and provisions of this agreement shall remain in full force and
16 effect."

17 § 4100b. ENFORCEMENT; VERMONT MOTOR VEHICLE INDUSTRY

18 BOARD

19 (a) There is established a Vermont motor vehicle industry board for the
20 purpose of enforcing the provisions of this chapter. The board shall consist of
21 the commissioner of the department of motor vehicles or designee, who shall

1 serve as chair, and six members appointed by the governor with the advice and
2 consent of the senate. Four members of the board shall constitute a quorum.

3 No member of the board shall:

4 (1) Have an ownership interest in or be employed by a manufacturer,
5 factory branch, distributor, or distributor branch.

6 (2) Have an ownership interest in or be a motor vehicle dealer or an
7 employee of a motor vehicle dealer.

8 (3) Be employed by an association of motor vehicle dealers,
9 manufacturers, or distributors.

10 (b) The board shall be attached administratively to the department of motor
11 vehicles.

12 (c) The board shall adopt rules to implement the provisions of this chapter.

13 (d) Appointments shall be for terms of four years. Vacancies shall be filled
14 by appointment by the governor and continue for the unexpired term. The
15 members shall be at-large members and, insofar as practical, should reflect fair
16 and equitable statewide representation.

17 (e) Appointed members of the board may be paid a \$100.00 per diem for
18 each day actually engaged in the performance of their duties and may be
19 reimbursed their actual and necessary expenses incurred in carrying out their
20 duties.

1 (f) Except for civil actions filed in superior court pursuant to section 4099
2 of this title, the board shall have the following exclusive powers:

3 (1) Any person may file a written protest with the board complaining of
4 conduct governed by and in violation of this chapter. The board shall hold a
5 public hearing in accordance with the rules adopted by the board.

6 (2) The board shall issue written decisions and may issue orders to any
7 person in violation of this chapter.

8 (g) The parties to protests shall be permitted to conduct and use the same
9 discovery procedures as are provided in civil actions in the superior court.

10 (h) The board shall be empowered to determine the location of hearings,
11 appoint persons to serve at the deposition of out-of-state witnesses, administer
12 oaths, and authorize stenographic or recorded transcripts of proceedings before
13 it. Prior to the hearing on any protest, but no later than 45 days after the filing
14 of the protest, the board shall require the parties to the proceeding to attend a
15 prehearing conference in which the chair or designee shall have the parties
16 address the possibility of settlement. If the matter is not resolved through the
17 conference, the matter shall be placed on the board's calendar for hearing.
18 Conference discussions shall remain confidential and shall not be disclosed or
19 used as an admission in any subsequent hearing.

20 (i) Compliance with the discovery procedures authorized by subsection (g)
21 of this section may be enforced by application to the board. Obedience to

1 subpoenas issued to compel witnesses or documents may be enforced by
2 application to the superior court in the county where the hearing is to take
3 place.

4 (j) Any party to any proceeding under this chapter who recklessly or
5 knowingly fails, neglects, or refuses to comply with an order issued by the
6 board shall be fined a civil penalty not to exceed \$2,500.00. Each day of
7 noncompliance shall be considered a separate violation of such order.

8 (k) Within 20 days after any order or decision of the board, any party to the
9 proceeding may apply for a rehearing with respect to any matter determined in
10 the proceeding or covered or included in the order or decision. The application
11 for rehearing shall set forth fully every ground upon which it is claimed that
12 the decision or order complained of is unlawful or unreasonable. No appeal
13 from any order or decision of the board shall be taken unless the appellant
14 makes an application for rehearing as provided in this subsection, and when
15 such application for rehearing has been made, no ground not set forth in the
16 application shall be urged, relied on, or given any consideration by the board
17 unless the board for good cause shown allows the appellant to specify
18 additional grounds. Any party to the proceeding may appeal the final order,
19 including all interlocutory orders or decisions, to the superior court within 30
20 days after the date the board rules on the application for reconsideration of the
21 final order or decision. All findings of the board upon all questions of fact

1 properly before the court shall be prima facie lawful and reasonable. The order
2 or decision appealed from shall not be set aside or vacated except for errors of
3 law. No additional evidence shall be heard or taken by the superior court on
4 appeals from the board.

5 (l) In cases where the board finds that a violation of this chapter has
6 occurred or there has been a failure to show good cause under section 4089 or
7 4098 of this title, the superior court, upon petition, shall determine reasonable
8 attorney's fees and costs and award them to the prevailing party.

9 § 4100c. FINANCING; VERMONT MOTOR VEHICLE INDUSTRY

10 BOARD FUND

11 (a) The Vermont motor vehicle industry board fund is established as a
12 special fund in the state treasury. The fund shall be revolving, continually
13 appropriated, and nonlapsing. Except as otherwise provided in this chapter, all
14 fees and civil penalties collected pursuant to this chapter shall be paid into the
15 state treasury immediately upon collection and credited to the motor vehicle
16 industry board fund.

17 (b) To fund the Vermont motor vehicle industry board fund and to pay the
18 start-up expenses of administration and enforcement of this chapter, the board
19 shall impose an initial start-up fee upon each new motor vehicle dealer of
20 \$200.00 for each dealer license held by that dealer and an initial start-up fee of
21 \$2,000.00 for each manufacturer which sells or distributes new motor vehicles

1 within the state. Upon the filing of a protest under this chapter, the protesting
2 party shall pay into the fund a fee of \$1,500.00.

3 (c) The commissioner of the department of motor vehicles may draw upon
4 the fund, established in subsection (a) of this section, to pay the expenses of
5 administration and enforcement of this chapter.

6 (d) The commissioner of the department of motor vehicles shall have the
7 authority to impose an additional operational fee upon any motor vehicle
8 dealer or manufacturer which sells or distributes new motor vehicles within the
9 state in addition to the initial start-up fee imposed pursuant to this section, if
10 the commissioner determines that the imposition of such fee is necessary to
11 fund the ongoing operations of the board.

12 § 4100d. STATUTE OF LIMITATIONS

13 (a) Actions arising out of any provision of this chapter shall be commenced
14 within four years of the date the cause of action accrues; provided, however,
15 that if a person conceals the cause of action from the knowledge of the person
16 entitled to bring it, the period prior to the discovery of the cause of action by
17 the person so entitled shall be excluded in determining the time limited for
18 commencement of the action.

19 (b) Notwithstanding any provision in a franchise agreement, if a dispute
20 covered by this chapter or any other law is submitted to mediation or

1 arbitration, the time for the dealer to file a complaint, action, petition, or
2 protest is tolled until the mediation or arbitration proceeding is completed.

3 § 4100e. RIGHT OF FIRST REFUSAL

4 Notwithstanding the terms, provisions, or conditions of an agreement or
5 franchise, the sale or transfer, or the proposed sale or transfer, of a franchisee's
6 dealership, or the change or proposed change in the executive management of a
7 franchisee's dealership shall not make applicable any right of first refusal of
8 the franchisor.